

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD
SPECIAL CIVIL APPLICATION No 5495 of 1999
For Approval and Signature:

Hon'ble MR.JUSTICE C.K.THAKKAR

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1. Whether Reporters of Local Papers may be allowed : YES
to see the judgements?
 2. To be referred to the Reporter or not? : NO
 3. Whether Their Lordships wish to see the fair copy : NO
of the judgement?
 4. Whether this case involves a substantial question : NO
of law as to the interpretation of the Constitution
of India, 1950 of any Order made thereunder?
 5. Whether it is to be circulated to the Civil Judge? : NO

ABDUL SATAR LATIFBHAI VAHORA MEMBER

Versus

STATE OF GUJARAT

Appearance:

MR MEHUL SHARAD SHAH for Petitioner
MS SIDDHI TALATI, AGP Respondent No. 1, 2, 3

CORAM : MR.JUSTICE C.K.THAKKAR

Date of decision: 13/04/2000

ORAL JUDGEMENT

In this matter, ex-parte rule was already issued on 30th July, 1999. Notice as to interim relief was also issued which was made returnable on 11th August, 1999. The order read as under :

"Mr. Mehul S Shah for the petitioner. Rule.
Notice as to the interim relief returnable on
11.8.1999. In the meanwhile, the operation of

the order dated 24th July, 1999 passed by the Director of Municipalities read with the order dated 11th June, 1999 passed by the Collector, Mehsana disqualifying the petitioner from continuing as a member of the Vadnagar Nagar Palika shall remain stayed with all legal consequences as if the petitioner has never been disqualified. It will be open for the petitioner to inform the concerned respondents by fax at his own costs. Direct service is permitted."

Today, the matter is called out for hearing of interim relief. In the facts and circumstances, I am of the opinion that the matter deserves to be finally disposed of.

This petition is filed against the order passed by the Collector, Mehsana, respondent No.2 herein disqualifying the petitioner from holding office of councillor of Vadnagar Nagar Palika. The case of the petitioner is that he is elected councillor of Vadnagar Nagar Palika for the last two terms i.e. for last eight years. On 5th February, 1999, a show cause notice was issued by the Collector, Mehsana under Section 38 of the Gujarat Municipalities Act, 1963 (hereinafter referred to as 'the Act') inter alia alleging that the petitioner was elected as a councillor from ward No.5 of Vadnagar Nagar Palika. He was a partner in Rachna Sales Corporation and Gujarat Engineering Works situated in Vadnagar. As a partner, he had financial interest in both the firms. In spite of that, certain quantity of cement was sold to the Nagar Palika by the said two firms in 1996, 1997 and 1998. As the petitioner was one of the partners, he incurred disqualification under the Act and hence, he was liable to be declared as disqualified under Section 38 of the Act.

The petitioner submitted his reply inter alia stating that he ceased to be a partner as he voluntarily retired from the said firms with effect from 1st April, 1996, and there was new constitution of both the firms in which he was not a partner. For that purpose, reliance was placed on the deed of dissolution as also a communication sent to the Sales Tax Officer (3), Visnagar on 23rd February, 1999 as also to the Registrar of Firms on 3rd April 1999. The Collector, however, declared the petitioner disqualified observing that both the documents were subsequent to issuance of the notice by him under Section 38.

Being aggrieved by the said order passed by the Collector, the petitioner preferred an appeal. Section 38 (4) of the Act provides that any person aggrieved by a decision of the Collector may file an appeal to the State Government. It was stated that powers of the State Government have been delegated on the Director of Municipalities and such appeal lies before the Director of Municipalities. The appeal was filed, but no order regarding stay was made. Hence, the petitioner approached this Court by filing the present appeal.

At the preliminary hearing itself, the Court was satisfied that the matter required consideration and hence Rule was issued. Notice as to interim relief was issued and meanwhile, ad-interim relief was granted suspending the order passed by the Collector as well as the Director of Municipalities by further observing that the petitioner must be treated as holding office of councillor of Vadnagar Nagar Palika as if no order was passed against him .

Today, I have heard the parties.

Mr. Shah for the petitioner raised various contentions. He relied upon a decision of a Single Judge of this Court in Chandrikaben Kapilbhai Joshi vs. Collector, Bhavnagar, 1996 (3) GLR 477 in which it was observed that mere relationship between councillor and the contract of supply of materials or services does not ipso facto result in disqualification of a person being elected as a councillor. It is further necessary that in obtaining such work, contract or employment, such person must have acted as councillor. It was also observed that councillor' action in securing such contract, work or employment is sine qua non before he incurs disqualification.

Mr. Shah submitted that though the petitioner has retired from both the partnerships firms with effect from 1st April, 1996, even if there was some suspicion in the minds of the authorities at the most, the first condition can be said to be satisfied. The second ingredient was not at all satisfied and it was not even the case of the authorities in the show cause notice that the petitioner acted as a councillor in getting the work from the municipality. As the point is directly concluded by the aforesaid decision, the petition deserves to be allowed.

Ms. Talati, learned AGP, on the other hand, raised a preliminary objection. She contended that not only a statutory remedy of appeal which is alternative and

efficacious remedy is available to the petitioner but it has been availed of by the petitioner. The appeal is already pending before the Director of Municipalities and this Court may not exercise extraordinary powers under Article 226 of the Constitution.

I find considerable force in the argument of Ms Talati. True it is that the Director of Municipalities has not passed any order on interim relief. Prima facie, Mr. Shah is also right that a decision in Chandrikaben is relevant on the point and the petitioner may place reliance on it. However, when alternative and more efficacious remedy is available and is availed of by the petitioner, in my opinion, it would be appropriate to direct the Appellate Authority to dispose of the appeal as expeditiously as possible preferably within three months from the receipt of the writ.

Since rule was issued and ad-interim relief was granted and prima facie, decision in Chandrikaben supports the contentions of the petitioner, it would also be in the interest of justice to direct the authority to continue ad-interim relief which has been granted at the time of issuance of rule in this petition till disposal of the appeal. It is also directed that if the decision will be against the petitioner, it will not be implemented for a period of two weeks from the receipt of order by the petitioner. Petition is accordingly disposed of. Rule is made absolute to the aforesaid extent. No order as to costs.

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parekh